

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ESTABLISHMENT OF DUAL PARTY RELAY |) | |
| TELECOMMUNICATIONS SERVICES FOR |) | ADMINISTRATIVE |
| HEARING-IMPAIRED OR SPEECH-IMPAIRED |) | CASE NO. 333 |
| PERSONS IN KENTUCKY |) | |

O R D E R

Procedural Background

Pursuant to the provisions of KRS 278.548, enacted by the 1990 Kentucky General Assembly, state-wide dual party relay service ("DPRS") for hearing-impaired and speech-impaired persons in Kentucky is required to be available no later than October 1, 1991. The Commission initiated this proceeding by Order dated April 25, 1990. Copies of the Order were sent to telecommunications utilities, the Attorney General's Utility and Rate Intervention Division, and all persons and organizations from whom written communications had been received. All interested persons were encouraged to participate in the proceeding. Parties to the proceeding include telecommunications utilities, hearing- or speech-impaired individuals, organizations representing the hearing/speech-impaired community, churches, and other concerned individuals and organizations.

On June 5, 1990, an informal conference was held for the purpose of sharing information concerning the procedure to be followed in an administrative docket before the Commission. By

Order of August 22, 1990, the Commission provided copies of a draft Request for Proposals ("RFP") to all parties and requested that the parties file comments and suggestions on the content of the RFP. In its Order of November 12, 1990, the Commission found that an Advisory Committee should be appointed to monitor DPRS after implementation and encouraged testimony concerning the DPRS Advisory Committee such as the appropriate number of members, how and by whom members should be selected, and the term(s) such members should serve. Subsequently, on December 3, 1990, a hearing was held to allow all parties an opportunity to respond to comments previously filed, present testimony, and to question other parties.

In accordance with the procedural schedule established by Order of January 3, 1991, the Commission issued the RFP on February 1, 1991 requiring all telecommunications carriers desiring to be considered as the DPRS provider to submit proposals in compliance with the RFP no later than 4:30 p.m., Eastern Standard Time, March 4, 1991.

Selection of Vendor

In response to the RFP, AT&T Communications of the South Central States, Inc. ("AT&T"), Cincinnati Bell Telephone ("CBT"), MCI Telecommunications Corporation ("MCI"), South Central Bell Telephone Company ("SCB"), Sprint Services ("Sprint") and Tesinc submitted proposals for the provision of state-wide DPRS. In addition, each of the potential vendors made oral presentations to the Commission to further explain their proposals and to answer questions posed by the Commission.

The RFP provided for evaluation of the proposals based on the following:

- A. Mandatory Requirements of the RFP
- B. Technical Requirements of the RFP
 - 1. Corporate capabilities and experience
 - 2. Project schedule
 - 3. Technical approach
- C. Cost Proposal
 - 1. Consistency with technical approach
 - 2. Accuracy of calculations

In evaluating the proposals, the Commission has been mindful of its charge from the Kentucky General Assembly "to determine the most cost effective method of providing dual party relay services that will meet the requirements of the hearing-impaired and speech-impaired"¹ persons in Kentucky. Each proposal was evaluated in accordance with the above-stated criteria and in compliance with the statutory mandates.

Based upon its evaluation, the Commission has determined that AT&T shall provide state-wide DPRS in Kentucky through its regional center in Alabama. AT&T best fulfilled the mandatory requirements of the RFP, demonstrated superiority in its technical abilities and corporate experience in the provision of this service, and proposed to provide DPRS in a cost-effective method. Accordingly, the regional provision of DPRS by AT&T is the most

¹ KRS 278.548.

cost-effective method of providing DPRS that will best meet the requirements of the hearing-impaired and speech-impaired persons in this state.

As specified in the RFP, the contract between the Commission and AT&T shall consist of the RFP, any amendments thereto, AT&T's offer submitted March 4, 1991 in response to the RFP, all incorporated by reference as if fully set forth herein, as well as this Commission Order. In the event of a conflict in language between the RFP and AT&T's offer, the provisions and requirements set forth in the RFP shall govern.²

AT&T proposed certain modifications to Section 5 of the RFP. Any modification not accepted is deemed to be rejected and not part of the contract between the Commission and AT&T. The Commission makes the following modifications and additions to the RFP conditions:

- (1) 5.1 General - Replace the last paragraph with "The contract shall be construed according to the laws of the Commonwealth of Kentucky. Any legal proceedings regarding this RFP or any resultant contract shall be brought in Commonwealth of Kentucky administrative or judicial forums. Venue will be in Franklin County, Commonwealth of Kentucky."
- (2) 5.7 Contract Term - Replace sub-section C with "The PSC shall have an option to renew the contract 120 days prior to the contract's termination."
- (3) 5.8.A Termination for Default - Add to the end of the first sentence of this section the phrase "except where such default is the result of a force majeure event as defined in Section 5.13 and

² RFP, Section 5.1, p. 18.

provided that the Commission gives the vendor a reasonable period of time to cure the default."

- (4) 5.8.C Termination for Unavailability of Funds - Add to the end of the first sentence of this section "provided, however, that the Commission gives vendor written notice of termination effective 120 days after the giving of such notice and the notice is accompanied by payment of all amounts due under the Contract."
- (5) 5.8.C Termination for Unavailability of Funds - Add to the end of the second sentence of this section "provided, however, that (i) funds are not appropriated and are not otherwise available for the acquisition of services which are the same as or similar to those provided under this Agreement; (ii) such non-appropriation or unavailability of funds has not resulted from any act or failure to act of the Commission; and (iii) the Commission has exhausted all funds legally available for payment under the Agreement and no other legal procedure exists for making payment under the contract."
- (6) 5.8.D Termination for Convenience - Modify this section by adding to the end of the first sentence "provided, however, that in no event shall such termination be on less than 120 days written notice."
- (7) 5.9 Procedure on Termination - Add to the beginning of the first sentence of sub-section D "Subject to vendor's contractual obligation relating to the terminated orders." Add "to the vendor" between "reimbursable" and "in whole" in the last sentence of sub-section D.
- (8) 5.11 Contractor Personnel - Delete the second sentence and the last sentence and the phrase "if approved" from the third sentence.
- (9) 5.12 Changes in Scope - Add the following sentence to this section between the second and third sentences: "In addition, vendor is permitted to make any change in scope or otherwise as may be required by law, including rules or regulations issued by the Federal Communications Commission in implementing the Americans with Disabilities Act of 1990."
- (10) 5.13 Force Majeure - Replace the first sentence with "The vendor shall not be liable for any loss, cost, damage, expense or delay caused by or due to events beyond its reasonable control and without

its fault or negligence." In the third sentence insert the word "reasonable" between "the" and "control."

- (11) 5.19 Assignment - Add to the beginning of the first sentence of this section "Except with respect to an affiliate (as defined in Section 5.18)."
- (12) 5.20 Hold Harmless - Add the words "third party" to the first line of sub-section A and to the first and fourth lines of sub-section B between "any" and "claims."
- (13) 5.27 Insurance - Vendor is permitted to be self-insured.
- (14) 5.29 Audit Requirements - Insert the phrase "relating to the contract" in the last sentence of this section between "records" and "shall." Add the phrase "provided that the items subject to audit or otherwise accessible are treated as the proprietary information of AT&T and held in confidence to the extent permitted by law" to the end of this section.
- (15) 5.30 Contract Records Retention - Add the phrase "Provided that the items subject to audit or otherwise accessible are treated as the proprietary information of AT&T and held in confidence to the extent permitted by law" to the beginning of this section.
- (16) 5.37 Publicity - Except for Commission Orders, correspondence and press releases issued in the ordinary course of business, any publicity, advertising or other like materials mentioning vendor or vendor's logos in connection with services provided under this Agreement shall be subject to the prior approval of vendor, which approval shall not be unreasonably withheld.
- (17) 5.38 Failure to Perform - Vendor shall have no liability under this Agreement for any loss, cost, claim, injury, or damages caused solely by the Commission's act or omission.
- (18) 5.39 Title to Facilities and Equipment - Title to all facilities and equipment employed by vendor in the provision of DPRS hereunder shall remain vested in AT&T.
- (19) 5.40 Nondisclosure - In connection with the implementation of DPRS, either party may disclose to the other specifications, drawings, software,

data, prototype, or other business and/or technical information ("Information") which is considered proprietary and confidential. The information shall be used by the receiving party solely for the purpose of providing DPRS and shall be reproduced only to the extent necessary for that purpose. The receiving party agrees to restrict disclosure of the Information to its employees with a need to know, and to advise those employees of the obligations of confidentiality arising hereunder. Information will not be disclosed to any third party without the prior written approval of the other party except as may be directed by a court or commission of competent jurisdiction and provided that the party obligated to make such disclosure attempts to reasonably notify the other party before making such disclosure. Neither party shall be liable for the inadvertent or accidental disclosure of Information, if such disclosure occurs despite the exercise of a reasonable degree of care which is at least as great as the care such party normally takes to preserve its own proprietary information of a similar nature. These restrictions on the use or disclosure of Information by a receiving party shall not apply to any Information which (a) is received without restriction from another source having the right to furnish such Information; (b) is or has become publicly available, other than by authorized disclosure; (c) is independently developed by the receiving party or any affiliated company; or (d) is not reasonably known by the receiving party to be Information, which exception shall not apply to any Information upon which is stamped or written the words "PROPRIETARY" OR "CONFIDENTIAL" by the disclosing party when disclosed to the receiving party.

AT&T's office at 245 West Main Street, Frankfort, Kentucky, shall be served notice of meetings or other matters related to DPRS and shall function as the interface between the Commission, the DPRS Advisory Committee and the Relay Center in Alabama.

Release to the Public of Proposals

The Commission has maintained all responses to the RFP as confidential pending the selection of a vendor. Those bidders who desire to maintain the confidentiality of portions of their

responses which they believe are entitled to such protection may, unless they have previously done so, petition the Commission in accordance with its regulations. Petitions for confidential protection by those who have not previously done so, must be filed no later than ten days from the date of this Order, at the expiration of which period material not petitioned to be protected shall be placed in the public record.

Funding and Surcharge

The RFP provides that funding of DPRS shall be accomplished through a specified surcharge per local access line to be collected by the local exchange companies and shown as a separate line item charge on each customer's monthly bill. All monies collected from the surcharge will be deposited on a monthly basis into a single, interest-bearing, cash-management escrow account to be established at a financial institution located within the Commonwealth of Kentucky and selected by the Commission. The account will be designated as the Kentucky DPRS Fund.

To facilitate the implementation of DPRS, the Commission has determined that collection of the surcharge shall begin with bills rendered on and after July 1, 1991, and that the appropriate surcharge level is 10 cents per month per access line. The Commission will review the surcharge revenues at least semi-annually for the first two years of operations and annually thereafter, and shall make adjustments to the surcharge as warranted.³ Prior to July 1, 1991, the Commission will select the

³ RFP, Section 4.1, p. 17.

financial institution which will manage the fund and provide pertinent information to all local exchange companies to enable them to make the monthly surcharge deposits. The local exchange companies shall file quarterly reports with the Commission showing the amounts collected and deposited each month. The surcharge shall be shown on customer bills as "Kentucky Dual Party Relay Service Surcharge."

DPRS Advisory Committee

The primary purpose of the DPRS Advisory Committee is to monitor the quality of service provided to DPRS users and to provide reports and recommendations to the Commission for improvements to the service and the resolution of any problems which might arise.

The Kentucky Commission on the Deaf and Hearing Impaired proposed a 13 member committee composed of two consumers from the deaf community to be selected by the Kentucky Association for the Deaf, two members to be selected by the Kentucky Commission on the Deaf and Hearing Impaired, one of which would be a service provider to the deaf or speech-impaired community, two representatives of the Kentucky Telephone Association, one representative of the Kentucky Registry of Interpreters for the Deaf, one representative from Self Help for the Hard of Hearing People, Inc., one representative of the Kentucky Coalition of Handicapped People who would be speech-impaired, but not hearing impaired, one representative of the Kentucky Chapter of the A. G. Bell Association for the Deaf, one representative of the

American Association of Retired Persons, and two representatives of the Attorney General's Office, Division of Consumer Protection.⁴

The proposal of the Kentucky Commission on the Deaf and Hearing Impaired provides a broad range of representation for those persons who will be the primary users of DPRS and who would be in a position to best evaluate the quality of service. However, the Commission is concerned that the difficulty of coordinating and assembling a group of this size would diminish the effectiveness of the committee. Also, since DPRS will be utilized by speech-impaired persons who may or may not have a hearing impairment, the Commission believes two members who are speech impaired, but not hearing impaired, would provide more balanced representation. In order to obtain the greatest benefit and utilize DPRS to the fullest possible extent, a representative from the education arena would be a valuable addition to the DPRS Advisory Committee.

The Commission has, therefore, determined that the DPRS Advisory Committee shall be composed of nine members, one of whom shall be selected by each of the following as its representative:

Kentucky Association for the Deaf, Inc.

Kentucky Commission on the Deaf and Hearing Impaired

Kentucky Telephone Association

Kentucky Registry of Interpreters for the Deaf

⁴ Transcript of Evidence, December 3, 1991, page 146.

Kentucky Coalition for People with Handicaps (speech-impaired but not hearing impaired)

Kentucky Association of Speech, Hearing and Language Impaired (speech-impaired or language impaired but not hearing impaired)

Deaf Education Training Program, Department of Special Education, Eastern Kentucky University

Additionally, a representative from AT&T and the Commission Staff contact person will be members of the DPRS Advisory Committee.

Each of the designated organizations shall submit the name and/or title of its representative to the Commission on or before May 15, 1991. The Commission will designate a Staff contact person who will serve as the primary interface between the DPRS Advisory Committee and the Commission.

The parties did not address the terms the DPRS Advisory Committee members should serve. Considering the range and continuity of user representation afforded by the designated organizations, establishment of specific terms for individual members is neither necessary nor advisable. Therefore, each organization should be responsible for selecting a representative (and any replacement) to serve on the DPRS Advisory Committee for the duration of the 5-year DPRS contract period.

At the end of the 5-year contract period, the Commission, with the advice and counsel of the DPRS Advisory Committee, shall determine if there is a continuing need for a DPRS Advisory Committee or if expansion and quality of DPRS in Kentucky has progressed to the extent that the additional monitoring provided by the DPRS Advisory Committee is no longer necessary.

Prior to implementation of DPRS, the Commission through its designated representative(s) will schedule an organizational meeting with the DPRS Advisory Committee to include, but not be limited to, internal committee organization; procedure for and frequency of regular and special meetings; type and frequency of reports; and scope of DPRS Advisory Committee responsibilities.

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, HEREBY ORDERS that:

1. AT&T be and it hereby is selected to provide intrastate DPRS within the Commonwealth of Kentucky under the terms and conditions set forth in the contract.

2. Section 5 of the RFP, containing the conditions, shall be modified as set forth herein.

3. Bidders who have not previously petitioned for confidential protection of their proposals may do so no later than 10 days from the date of this Order.

4. The Kentucky DPRS shall be funded by a monthly surcharge in the amount of 10 cents per local access line.

5. The surcharge shall be collected by the local exchange companies beginning with bills rendered on and after July 1, 1991 and shall be shown as a separate item on customer bills designated as "Kentucky Dual Party Relay Service Surcharge."

6. All monies collected from the surcharge shall be deposited in the Kentucky DPRS Fund by the local exchange companies on a monthly basis in the manner described herein.

7. On and after October 1, 1991, the local exchange companies shall file quarterly reports with the Commission showing the amounts collected and deposited each month from the surcharge.


8. The DPRS Advisory Committee shall be composed of nine members, one of whom shall be selected by each of the organizations or agencies listed herein. The names and/or titles of the selected members shall be submitted to the Commission on or before May 15, 1991.

Done at Frankfort, Kentucky, this 15th day of April, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director